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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,506	06/24/2003	Russell Minoru Hanabusa	2002-123	2172
23843	7590	07/09/2007		
FOOTHILL LAW GROUP 777 N. FIRST STREET, SUITE325 SAN JOSE, CA 95112			EXAMINER LEE, BENJAMIN C	
			ART UNIT 2612	PAPER NUMBER
			MAIL DATE 07/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/602,506	Applicant(s) HANABUSA ET AL.	
	Examiner Benjamin C. Lee	Art Unit 2612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2007 and 09 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7,21,33,34,36,40,44,51,52 and 99 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 99 is/are allowed.
- 6) ☒ Claim(s) 7,21,33,34,40,51 and 52 is/are rejected.
- 7) ☒ Claim(s) 36 and 44 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response To Amendment

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed on 2/28/07 and 4-9/07 have been entered.

Claim Status

2. Claims 7, 21, 33-34, 36, 40, 44, 51-52 and 99 are pending.

Drawings/Specification

3. The amendment filed 3/3/04 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Fig. 59 has not been canceled, and constitutes new matter as indicated in the objection to the specification in the Office action mailed 12/27/05.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

4. Claims 7 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1) Claim 7 claims a collection of devices, items, articles and objects without indicating whether they are claimed in singularity or in combination, since the "and" of line 11 appears to

Art Unit: 2612

be for the “vessel shaped as” phrase and not the whole claim. Furthermore, claim 7 claims a “device” comprising a collection of devices, items and articles, which together does not equal to a “device”.

2) Claim 21 is similarly rejected due to claim dependency on claim 7.

Claim Rejections - 35 USC § 102

5. Claims 7, 21 and 33-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Masi et al. (US pat. #5,517,180).

Masi et al. discloses:

1) claim 7 (interpreted as comprising a list of articles in the “or” condition): A device for deterring an attack and aiding identification of an attacker (Abstract; col. 4, lines 28-34; col. 6, lines 55-65; col. 7, lines 42-48) comprising: a tube (i.e. elongated) or bite actuated vessel (“ampule” is pressure actuated regardless of the source of pressure is from the hand or mouth bite), or any item capable of containing the evidence material and made of any suitable material (Figs. 1-5 and 7-11);

2) claim 21: particles (col. 4, lines 28-34; col. 6, lines 55-65; col. 7, lines 42-48, whereby pepper spray fluid, glowing liquid, colored paint constitute particles suspended in liquid);

3) claim 33: A device shaped “for” (i.e. intended use and having the capability of) obtaining and retaining samples of tissue, skin, hair and body fluids (“ampule” is a container having a nozzle that in an intended use constitutes a device that can be used to (i.e. the claimed “for”) obtain and retain/store such samples);

4) claim 34: the vessel/ampule is contains particles, granules, solid, liquid or semi-solid

Art Unit: 2612

in its original contents or in the intended body fluids;

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 33 and 51-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Augello et al. (US pat. #6,602,718).

Augello et al. discloses:

1) claim 33: A device shaped for obtaining and retaining samples of tissue, skin, hair and body fluids (10 in Fig. 1 disclosed as being for obtaining biological sample including blood, but it is inherently shaped, as a tube container, for obtaining and retaining tissue, skin, hair and small samples/fragments/powders of bone as well, whereby introduction of samples into container 10/18 can be done by removing cap OR through needle 24).

2) claims 51-52: further comprises a preservative comprising salt (col. 5, line 30) which is capable of preserving the properties of tissue, skin, hair, bone and body fluids.

Allowable Subject Matter

Art Unit: 2612

8. Claim 99 is allowed.

9. Claims 36 and 44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response To Arguments

10. No arguments were filed.

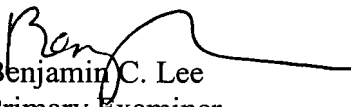
Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin C. Lee whose telephone number is (571) 272-2963.

The examiner can normally be reached on Mon -Thu 9:00Am-5:30Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu can be reached on (571) 272-2964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Benjamin C. Lee
Primary Examiner
Art Unit 2612

B.L.